



<b>Bid Number:</b> 10-B034B		<b>Bids will be received until:</b> November 22, 2010 @ 11:30 am	
<b>Bid Title:</b> Akron Mercury Quick Attack Monitor & Assembly			
<b>Mailing Date:</b> October 29, 2010		<b>Direct Inquiries to:</b> Robin D. Barrett, CPPB	
<b>Vendor Name:</b>		<b>FEIN/SS#:</b>	
<b>Vendor Address:</b>			
<b>City – State – Zip:</b>			
<b>Telephone Number:</b>		<b>Fax Number:</b>	
<b>Minority or Women Owned Business:</b> Are you a certified Minority or Women-Owned business in the State of South Carolina? <input type="checkbox"/> Yes <input type="checkbox"/> No If so, please provide a copy of your certificate with your response.			
<b>Authorized Signature:</b> _____		<b>Title:</b> _____	
<b>Date:</b> _____			
I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. I agree to abide by all conditions of this bid and certify that I am authorized to sign this bid for the bidder.			

### **IMPORTANT**

1. This solicitation does not commit the City of Charleston to award a contract, to pay any costs incurred in the preparation of applications submitted, or to procure or contract for the services. The City reserves the right to accept or reject any, all or any part of any bid received as a result of this Bid Solicitation, or to cancel in part or in its entirety this Bid Solicitation if it is in the best interest of the City to do so. The City shall be the sole judge as to whether bids submitted meet all requirements contained in this solicitation.
2. Bidder may **mail**, or **hand-deliver** response to the Procurement Division (address above). **Do Not Fax** in the bid response. Please show the solicitation number on the outside of any mailing package. The City of Charleston assumes no responsibility for unmarked or improperly marked envelopes. If directing any other correspondence, address the envelope to the Procurement Division, but do not include the bid number on this envelope. If the Bidder chooses not to respond to this solicitation, it is recommended to return the “No Bid Response Form” to our office.
3. **DEADLINE FOR SUBMISSION OF OFFER:** Any bid or offer received after the Procurement Director of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the governmental bodies’ mail room which services that purchasing office prior to the bid opening. [R.19-445.2070(H)]
4. Questions regarding this solicitation must be submitted in writing no later than 3:00 p.m. on November 9, 2010. Questions may be faxed to 843-720-3872 or emailed to Robin Barrett @ [barrett@charleston-sc.gov](mailto:barrett@charleston-sc.gov).

## **INSTRUCTIONS TO BIDDERS**

1. Submit one (1) signed original response. Bids must be mailed or hand-delivered. **Responses received by fax or other electronic means (email, CD, etc.) will be rejected.** Bids must be submitted in a sealed envelope and must be addressed to the City of Charleston Procurement Division, 145 King Street, Suite 104 Charleston, SC 29401. Failure to do so may result in a premature opening of, or failure to open such Bid. Each sealed envelope containing a Bid shall be marked on the outside with the Bidder's complete Name, Address, Bid Solicitation Number, Description of Services Requested by Bid Solicitation (i.e., Elevator Maintenance, Road Construction), along with the Due Date and Time. If you do not choose to submit a proposal, please complete and return the enclosed "No Bid" response form.

A "No Bid" qualifies as a response; however, it is the responsibility of the Vendor to notify the Procurement Office if you receive solicitations that do not apply. Failure to respond to three (3) solicitations during the calendar year may result in removal from Vendor's List.

2. Bidders must clearly mark as "**Confidential**" each part of their bid which they consider to be proprietary information that could be exempt from disclosure under section 30-4-40, Code of Laws of South Carolina, 1976 (1986 Cum. Supp.) (Freedom of Information Act). If any part is designated as confidential, there must be attached to that part, an explanation of how this information fits within one or more categories listed in section 30-4-40. The agency reserves the right to determine whether this information should be exempt from disclosure and no legal action may be brought against the state or its agents for its determination in this regard.
3. Bids must be made in the official name of the individual, firm, company, partnership, corporation, joint venture or other legal entity under which the business is conducted (showing official business address) and must be signed in ink by a person duly authorized to legally bind the legal entity submitting the proposal.
4. Bids shall be typewritten or computer-generated. A Bid shall include, but is not limited to, addresses of all legal entities which will participate in the proposed services. The type of organization of the Bidder, whether individual, firm, partnership, corporation, joint venture or other legal entity, shall be stated. Any affiliations, parent-subsidary relationships, and corporate identities including the names of the principals of such legal entity must be fully disclosed and clearly explained.
5. If an error is made before submitting the bid, the error should be crossed out, corrections entered and initialed by the person signing the bid. Erasures or use of typewriter correction fluid may be cause for rejection. No bid shall be altered or amended after specified time for opening.
6. Bids may be withdrawn by written request received from the Bidder prior to the time set for opening of Bids, but not thereafter.
7. Bids should be prepared simply and economically. All data, materials, and documentation shall be available in a clear, concise form and reproducible upon request

“at cost” for the City’s internal use. The City reserves the right to reproduce bids for internal use in the evaluation process.

8. All Bids shall provide a straight forward, concise description of Bidder’s ability to satisfy the requirements of the Bid Solicitation.
9. All Addendum and Award Notices will be posted on our website: [www.charleston-sc.gov](http://www.charleston-sc.gov), Bidline, Procurement Bids.
10. The terms and conditions in this Bid Solicitation shall prevail unless otherwise modified by the City of Charleston in an Addendum to this Bid Solicitation. The City of Charleston reserves the right to reject, in whole or in part, any bid which does not comply with such terms and conditions. The City of Charleston reserves the right to retain all bids submitted and to use any ideas in a bid regardless of whether that bid is selected. Submission of a bid indicates acceptance by the Bidder of the conditions contained in this Bid Solicitation, unless clearly and specifically noted in the bid submitted and confirmed in any resulting contract between the City of Charleston and the Bidder selected.
11. No substitutions shall be considered after the contract award except by Amendment.
12. The City seeks qualified vendors to be responsible for completion of the work described herein and the City reserves the option to award portions of the project to multiple Bidders if such is to the advantage of the City. Therefore, any one bid submitted by more than one company shall be deemed to be a proposal for a joint venture between or among the companies so bidding unless the bid clearly and unequivocally describes that only one firm proposes to act as principal and the other firm(s) contractual position is clearly defined. The companies submitting as a joint venture shall be held jointly and severally responsible for the entire project and shall not be permitted to limit their liability to the City.
13. All bids should be complete and carefully worded and shall convey all of the information requested by the City. If errors or exceptions are found in a bid, or if the bid fails to conform to the requirements of the Bid Solicitation, the City shall be the sole judge as to whether that variance is significant enough to reject the bid.
14. The City reserves the right to request satisfactory evidence of their ability to furnish services in accordance with the terms and conditions listed herein. The City further reserves the right to make the final determination as to the bidder’s ability to provide said services.
15. The Bidder is solely responsible for all costs and expenses associated with the preparation of the bid and of any supplementary presentation (including any oral presentation) requested by the City.
16. **GRATUITIES AND KICKBACKS**
  - A) **Gratuities.** It shall be unethical for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase

request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

- B) Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor, or to hire any subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

#### 17. BIDDER REPRESENTATIONS

Each Bidder by submitting a Bid represents that:

- A) The Bidder has read and understands this Bid Solicitation (including all Specifications and Attachments) and that its Bid is made in accordance therewith.
- B) The Bidder has reviewed the Bid Solicitation and has become familiar with the local conditions under which the scope of work is to be performed. The failure or omission of a bidder to acquaint himself with existing conditions shall in no way relieve him of any obligation with respect to this bid or any resulting contract.
- C) The Bid is based on the terms, materials, services and obligations required by this Bid Solicitation, without exception.
- D) The Bidder is qualified to provide the services and equipment required under this Bid Solicitation and, if awarded the contract, shall do so in a professional, timely manner using successful Bidder's best skills and attention.
- E) The Bidder is guaranteeing that all goods and services will meet the requirements of the Bid Solicitation during the contract period.

#### 18. COMPETITIVE PROCUREMENT

It is the intent and purpose of the City of Charleston that this Bid Solicitation permit competition. It shall be each Bidder's responsibility to advise the City if any language, provision, or other requirement, or any combination thereof, inadvertently restricts or limits the satisfaction of the specifications stated in this Bid Solicitation to a single source. Such notification must be submitted in writing, and must be received by the City of Charleston Procurement Division no later than the last date for written questions. Any such notification shall be reviewed by the City's Procurement Director.

#### 19. ADDENDA/CHANGES

Any additions, deletions, modifications, or changes made to this Bid Solicitation shall be processed through the City's Procurement Director. Any deviation from this procedure may result in the disqualification of the bid or the cancellation of any contract resulting from this Bid Solicitation. Requests for interpretation of this Bid Solicitation and any other questions concerning the Bid Solicitation shall be made in writing, and addressed to the City's Procurement Director, 145 King Street, Suite 104, Charleston, South Carolina 29401. Questions may be transmitted by fax, but it shall be the responsibility of the sender to confirm receipt by the City. These requests must be submitted by the deadline for written questions. Responses to said requests shall be made at the discretion of the

City's Procurement Director. When issued, such interpretations and answers to such questions shall be in the form of an addendum to the Bid Solicitation which shall be posted on the City's website, [www.charleston-sc.gov](http://www.charleston-sc.gov). All such addenda shall become part of the Bid Solicitation and each Bidder shall be bound by such addenda whether or not received by the Bidder. The City of Charleston shall not be legally bound by any amendment or interpretation that is not in writing.

## 20. EVALUATION PROCESS

During the evaluation process the City of Charleston reserves the right, where it may serve the City of Charleston's best interest, to request additional information or clarification from Bidders, or to allow corrections of errors or omissions.

## 21. AWARD OF CONTRACT

- A) Award of contract shall be made to the most responsive and responsible Bidder(s) whose Bid, conforming to the Bid Solicitation, is most advantageous to the City of Charleston, price and other factors considered.
- B) The City of Charleston may, when in the best interest of the City, reject any or all Bids or waive technicalities or informalities in any Bids received.
- C) The City of Charleston shall be the sole judge of the suitability of the items or services to be provided pursuant to this Bid Solicitation.
- D) Final approval may rest with members of the City Council for the City of Charleston.
- E) All things considered equal, a tie bid will be resolved by the flip of a coin.

## 22. NOTICE OF AWARD OF CONTRACT

The successful Bidder shall be notified of acceptance of its Bid by a written Notice of Award of Contract. Successful Bidder(s) shall not undertake any work, and City shall not be responsible for payment for any work whatsoever undertaken by the successful Bidder(s) prior to issuance of the Notice to Proceed.

## 23. NOTICE TO PROCEED

A Notice to Proceed shall be issued after the Contractor(s) has executed the contract and has submitted acceptable Insurance Certificate(s) and Endorsement(s) and Performance and Payment Bonds to the City as well as other submittals specified herein as required to be delivered before the Notice to Proceed is issued. The Contractor(s) shall not commence work until it has received a written Notice to Proceed from the City's Director of Procurement.

## 24. MODIFICATION

The City's Director of Procurement shall have the unilateral right to modify any contract resulting from this Bid Solicitation, within the general scope of work, when said modification is in the best interest of the City. The right to issue change orders is not dependent upon the consent of the successful Bidder(s). At the direction of the Director of Procurement the successful Bidder is obligated to perform the revised contract. Contract fees or prices shall be equitably adjusted where an issued change order so

demands. No claim by the successful Bidder(s) for an adjustment hereunder shall be allowed if asserted after final payment under aforesaid contract.

25. INDEPENDENT CONTRACTOR

Successful Bidder is an independent contractor and shall not be deemed the agent or employee of the City of Charleston for any purpose whatsoever.

26. INSURANCE REQUIREMENTS

Upon the consummation of the contract for the services being solicited in this Bid Solicitation and receipt of the Notice of Award by the successful bidder (the "Contractor"), the Contractor shall, at all times during the term of the contract, carry insurance as required by the insurance requirements outlined in the insurance attachment which is attached hereto and incorporated by reference. The City shall not issue a Notice to Proceed until the Contractor has submitted acceptable insurance certificate(s) or endorsement(s), which must be submitted within five (5) calendar days after receipt of the Notice of Award, and which reflect that the required coverage's are in place and that all premiums have been paid. Refusal or failure to submit such certificate(s) or endorsement(s) shall constitute grounds for the City to revoke its notice of award, forfeit bid security, and award the contract to another contractor. The City may contact the Contractor's insurer(s) or insurer(s)' agent(s) directly at any time regarding its coverages, coverage amounts, or other such relevant and reasonable issues related to this contract. The Contractor(s) shall also require any sub-contractors to carry the same coverages in the same amounts. Faxed Insurance Certificate(s) and Endorsement(s) shall be accepted if received no later than the time of contract execution and the original documents are received within one (1) business day after receipt of the fax transmittals.

27. INDEMNIFICATION

Except for expenses or liabilities arising from the negligence of the City, the Contractor who enters into a contract with the City of Charleston as a result of this Bid Solicitation (the "Contractor") hereby expressly agrees to indemnify and hold the City harmless against any and all expenses and liabilities arising out of the performance or default of this contract as follows:

The Contractor expressly agrees to the extent that there is a causal relationship between its negligent, reckless or intentionally wrongful action or inaction, or the negligent, reckless or intentionally wrongful action or inaction of any of its employees or any person, firm, or corporation directly or indirectly employed by the Contractor, and any damage, liability, injury, loss or expense (whether in connection with bodily injury or death or property damage or loss) that is suffered by the City and its employees or by any member of the public, to indemnify and save the City and its employees harmless against any and all liabilities, penalties, demands, claims, lawsuits, losses, damages, costs, and expenses arising out of the performance or default of this Contract. Such costs are to include defense, settlement and reasonable attorneys' fees incurred by the City and its employees. This promise to indemnify shall include bodily injuries or death occurring to Contractor's employees and any person directly or indirectly employed by Contractor (including without limitation any employee of any subcontractor), the City's employees, the employees of any other independent contractors, or occurring to any member of the public. When the City submits notice, Contractor shall promptly defend any aforementioned action. This obligation shall survive the suspension or termination of the contract. The limits of insurance coverage required herein shall not serve to limit this

indemnity obligation. The recovery of costs and fees shall extend to those incurred in the enforcement of this indemnity.

28. BIDDER'S QUALIFICATIONS

The City reserves the right to request satisfactory evidence of any Bidder's ability to furnish services in accordance with the terms and conditions listed herein. The City further reserves the right to make the final determination as to the Bidder's ability to provide said services. We reserve the right to investigate the qualifications of any respondent under consideration, require confirmations of information furnished, and require additional evidence of qualifications to perform the work described in this Bid Solicitation, contact references, and request an audited financial statement in order to determine a potential contractor's capabilities.

29. OTHER CONTRACTS

The City of Charleston may undertake or award other contracts for portions of the work or additional work, and the Contractor(s) shall fully cooperate with such other contractors and City of Charleston employees and carefully fit its own work to such work as may be directed by the City. The Contractor(s) shall not commit or permit any act which shall interfere with the performance of work by any other contractor or by City of Charleston employees.

30. ASSIGNMENT

The Contractor(s) shall not assign in whole or in part its duties under the contract without the prior written consent of the City of Charleston. The Contractor shall not assign any money due or to become due to it under this contract without the prior written consent of the City of Charleston.

31. SUBCONTACTORS

- A) If any subcontractors shall be used for this project, the Contractor shall provide to the City's Director of Procurement a list of names of any of the intended subcontractors, the subcontractor's applicable license number(s), and a description of the work to be done by each subcontractor, if requested.
- B) The Contractor(s) shall not substitute other subcontractors without the written consent of the City's Director of Procurement.
- C) Contractor(s) shall be responsible for all services performed by a subcontractor. Responsibilities include, but are not limited to, compliance with any applicable licensing regulations.
- D) If at any time the City's Director of Procurement determines that any subcontractor is incompetent or undesirable, he shall notify the Contractor(s) accordingly, and the Contractor(s) shall take immediate steps for cancellation of the subcontract and replacement thereof with a subcontract that is approved by the City of Charleston.
- E) Nothing contained in any contract resulting from this Bid Solicitation shall create any contractual relationship between any subcontractor and the City of Charleston.

### 32. SUSPENSION OF WORK

The City may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as the City may determine to be appropriate for the convenience of the City of Charleston, or for noncompliance with the contract requirements.

### 33. TERMINATION

- A) For Convenience: The City reserves the right to terminate the contract with the Contractor when it is in the best interest of the City, including, but not limited to non-appropriation of funds. If the contract is so terminated, the City shall provide the Contractor with sixty (60) days written notice and shall compensate Contractor for all necessary and reasonable direct costs of performing the services actually accomplished as of the date of termination. No other costs shall be allowed for a termination for convenience. No damages shall be allowed for a termination for convenience.
- B) For Default: If the Contractor fails to comply with the terms of the contract the City shall notify the Contractor in writing of the specifics regarding such noncompliance. If the Contractor fails to begin to cure the noncompliance within five (5) days after the notice, the City may terminate the contract by written notice to the Contractor within ten (10) days thereafter and Contractor shall only be compensated for services actually completed prior to termination, contractor shall not be entitled to any costs or damages resulting from a termination under this section.

### 34. MATERIAL AND WORKMANSHIP; WARRANTIES AND REPRESENTATIONS

- A) If equipment, materials and supplies are to be a part of the service provided, all equipment, materials, and supplies incorporated in the work covered by the Bid and provided by the Contractor(s) are to be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in this Bid Solicitation, reference to any equipment, material, supply or patented process, by trade name, make or catalog number, shall not be construed as limiting competition. When requested, the Contractor(s) shall furnish to the City for approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature and rating of the machinery and mechanical and other equipment which the Contractor(s) contemplates incorporating in the work. When required by this Contract or when called for by the City the Contractor(s) shall provide full information concerning the material or supplies which he contemplates incorporating in the work. Machinery, equipment, material and supplies installed or used without the required prior approval shall be at the risk of subsequent rejection.
- B) By signing its bid, the successful Bidder(s) shall be deemed to have represented that its staff is knowledgeable about and experienced in performing the work required in this Bid Solicitation and warrants that it shall use best skill and attention to provide the above described work in a professional, timely manner.
- C) The City may, in writing, require the Contractor(s) to remove from the work any employee the City deems incompetent, careless or otherwise objectionable.

35. COMPLIANCE WITH LEGAL REQUIREMENTS

All applicable Federal, State and local laws, ordinances, and rules and regulations of any authorities shall be binding upon the Contractor(s) throughout the pendency of this Project. The Contractor(s) shall be responsible for compliance with any such law, ordinance, rule or regulation, and shall hold the City harmless and indemnify same in the event of non-compliance as set forth in the Contract.

36. PERMITS AND LICENSES

- A) The Contractor(s) shall, without additional expense to the City of Charleston, be responsible for obtaining all necessary licenses and permits required by the State of South Carolina, or the City of Charleston or any other authority having jurisdiction.
- B) Contractors and subcontractors are responsible at all times for obtaining applicable work permits and licenses of any kind.

37. CONTROLLING LAW

The Agreement shall be governed by the laws of the State of South Carolina. The Agreement and any dispute, claim, or controversy relating to the Agreement shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the City of Charleston. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in a Circuit Court for the Ninth Judicial Circuit sitting in Charleston, South Carolina. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by this solicitation. The parties expressly agree that the UN Convention on the International Sale of Goods shall not apply to the contract. The prevailing party shall be entitled to attorney's fees and the cost of said litigation.

38. STATE AND LOCAL TAXES

- A) Except as otherwise provided, contract prices shall *include* all applicable state and local taxes.
- B) If applicable, two percent (2%) income tax withholding shall be withheld from each and every payment pursuant to Sections 12-8-540 and 12-8-550 of the *South Carolina Code of Laws* (1976, as amended) for certain out-of-state contractors, and such sums shall be paid over to the South Carolina Department of Revenue and Taxation (the "SCDRT"). When and if the City receives an executed SCDRT Form I-312, Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, such withholding shall cease.
- C) Contractor shall calculate that portion of the contract which is subject to the seven and one-half percent (7.5%) South Carolina sales and/or use tax, which amount shall be itemized and shown on all invoices, and shall be paid to the SCDRT by Contractor. If Contractor is a non-South Carolina company, the City shall withhold said amount from all invoices and remit payment to the SCDRT, unless Contractor furnishes City with a valid South Carolina Use Tax Registration Certificate Number.

- D) Contractor shall indemnify and hold harmless the City for any loss, cost, or expense incurred by, levied upon or billed to the City as a result of Contractor's failure to pay any tax of any type due in connection with the contract.

39. INCORPORATION BY REFERENCE

The contents of this Bid Solicitation, including all drawings, attachments, specifications, exhibits, certificates, any addenda, Contractor's Bid Response Form and Pricing List, and affidavits shall become part of the contract for this Project.

40. PRIME CONTRACTOR RESPONSIBILITIES

The contractor shall be required to assume sole responsibility for the complete effort as required by this Bid Solicitation. The City shall consider the contractor to be the sole point of contact with regard to contractual matters.

41. OWNERSHIP OF MATERIAL:

Ownership of all data, material and documentation originated and prepared for the City pursuant to this contract shall belong exclusively to the City.

42. DRUG-FREE WORKPLACE:

(Note: This clause applies to any resultant contract of \$50,000 or more). The City of Charleston has amended Title 44, code of Laws of South Carolina, 1976, relating to health, by adding Chapter 107, so as to enact the Drug-Free Workplace Act. (See Act No. 593, 1990 Acts and Joint Resolutions). By submission of a signed proposal, you are certifying that you shall comply with this Act. (See Section 44-107-30). This shall certify to the using agency your compliance.

43. FUNDING

Bidders shall agree that funds expended for the purposes of the contract must be appropriated by the City of Charleston for each fiscal year included within the contract period. Therefore, the contract shall automatically terminate without penalty or termination costs if such funds are not appropriated. In the event that funds are not appropriated for the contract, the Bidder shall not prohibit or otherwise limit the City's right to pursue and contract for alternate solutions and remedies as deemed necessary by the City for the conduct of its affairs. The requirements stated in this paragraph shall apply to any amendment or the execution of any option to extend the contract.

44. SUBMITTING CONFIDENTIAL INFORMATION

(August 2002): (An overview is available at [www.state.sc.us/mmo/legal/foia.htm](http://www.state.sc.us/mmo/legal/foia.htm)) For every document Bidder submits in response to or with regard to this Bid Solicitation, Bidder must separately mark with the word "CONFIDENTIAL" on every page, or portion thereof, that Bidder contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document Bidder submits in response to or with regard to this Bid Solicitation, Bidder must separately mark with the words "TRADE SECRET" on every page, or portion thereof, that Bidder contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Bidder submits in response to or with regard to this Bid Solicitation, Bidder must separately mark with the word "PROTECTED" on every page, or portion thereof, that Bidder contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or

some other method in order to conspicuously distinguish the mark from the other text. Bidder shall not mark its entire Proposal (bid, proposal, quote, etc.) as confidential, trade secret, or protected! If a Proposal or any part thereof, is improperly marked as confidential or trade secret or protected, the City may, in its sole discretion, determine it non-responsive. If only portions of a page are subject to some protection, Bidder shall not be allowed to mark the entire page. By submitting a Bid to this Bid Solicitation, Bidder (1) agrees to the public disclosure of every page of every document regarding this Bid Solicitation that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not marked, as required by these bidding instructions, as a "TRADE SECRET" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the City shall detrimentally rely on Bidder's marking of documents, as required by these bidding instructions, as being either "CONFIDENTIAL" or "TRADE SECRET" or "PROTECTED". By submitting a Bid, Bidder agrees to defend, indemnify and hold harmless the City of Charleston, its officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the City withholding information that Bidder marked as "CONFIDENTIAL" or "TRADE SECRET" or "PROTECTED". (All references to S.C. Code of Laws.)

45. RECORDS RETENTION & RIGHT TO AUDIT

The City shall have the right to audit the books and records of the Contractor as they pertain to this contract. Such books and records shall be maintained for a period of three (3) years from the date of final payment under the contract. The City may conduct, or have conducted, performance audits of the Contractor. The City may conduct, or have conducted, audits of specific requirements of this bid as determined necessary by the City. Pertaining to all audits, the Contractor shall make available to the City access to its computer files containing the history of contract performance and all other documents related to the audit. Additionally, any software used by the Contractor shall be made available for auditing purposes at no cost to the City.

46. COST

Costs submitted with a Bid shall be firm for a period of at least 120 days from the closing date. All prices shall be firm-fixed type, unless stated otherwise.

47. UNSUCCESSFUL BIDDERS

Bidders not awarded a contract under this solicitation, may request return of their proposals within thirty (30) days after notification of award is mailed. All cost of returns shall be paid by the Bidder. If Federal Express, UPS, or other shipping number is not received with request, all materials shall be destroyed.

48. PAYMENT FOR GOODS & SERVICES

Payment for goods & services arising out of the contract resulting from this Bid Solicitation and received by the City shall be processed within 30 days of receipt of a valid invoice.

49. DISCUSSION/NEGOTIATION:

By submission of a bid, a bidder agrees that during the period following issuance of a bid and prior to final award of contract, the bidder shall not discuss this Procurement with any party except members of the City's Procurement Division or other parties specifically designated in this solicitation.

50. NON-DISCRIMINATION

The Contractor(s) shall not discriminate against any individuals based upon age, sex, race, disability or religion and shall abide by the requirements contained in Federal Executive Order Number 11246, as amended, including specifically the provisions of the equal opportunity clause.

51. DEFAULT

In case of default by the Contractor, the City reserves the right to purchase any or all items in default in the open market, charging the Contractor with any excessive costs. Should such charge be assessed, no subsequent response will be accepted from the defaulting Contractor until the assessed charge has been satisfied.

52. FORCE MAJURE

The Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the contractor. Such causes may include, but are not restricted to acts of God or of the public enemy, acts of the Governments in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the contractor and subcontractor, and without the fault or negligence of either of them, the contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the contractor to meet the required delivery schedule.

53. EXCEPTIONS AND DEVIATIONS

Any bid that does not meet the specifications and design criteria must be accompanied by documentation identifying and justifying all exceptions and deviations.

54. PROMPT PAYMENT DISCOUNT TERMS

Prompt payment discount terms will be calculated from the point of complete order acceptance for services and/or commodities ordered.

55. CONTRACT ADMINISTRATION: Questions or problems arising after award of this contract shall be directed to the Contracts Manager by calling (843) 965-4184. Copies of all correspondence concerning this contract shall be sent to the Procurement Director, 145 King Street, Suite 104 Charleston, SC 29401.

56. REJECTION

The City reserves the right to reject any bid that contains prices for individual items or services that are unreasonable when compared with the same or other bids if such action is in the best interest of the City.

57. ARBITRATION

Under no circumstances and with no exception will the City of Charleston act as Arbitrator between the Contractor and any Sub-Contractor.

58. GUARANTEE AND WARRANTIES

The Bidder shall state his normal warranty and any extended warranties where available. Excluding any manufacturer's warranties and in addition to other warranties as provided by law or herein, all labor and materials are warranted to be free from defects for a minimum period of twenty-four (24) months after the date of final payment by the City.

59. PUBLICITY RELEASES

Contractor agrees not to refer to any award of a contract in commercial advertising in such a manner as to state or imply that the products or services provided are endorsed or preferred by the user.

## NO PROPOSAL RESPONSE FORM

<b>Bid Number:</b> 10-B034B <b>Bids will be received until:</b> November 22, 2010 @ 11:30 am	
<b>Bid Title:</b> Akron Mercury Quick Attack Monitor & Assembly	
<b>Mailing Date:</b> October 29, 2010 <b>Direct Inquiries to:</b> Robin D. Barrett, CPPB	
<b>Vendor Name:</b>	<b>FEIN/SS#:</b>
<b>Vendor Address:</b>	
<b>City – State – Zip:</b>	
<b>Telephone Number:</b>	<b>Fax Number:</b>
<b>Minority or Women Owned Business:</b> <small>Are you a certified Minority or Women-Owned business in the State of South Carolina?      <input type="checkbox"/> Yes <input type="checkbox"/> No If so, please provide a copy of your certificate with your response.</small>	
<b>Authorized Signature:</b> _____	<b>Title:</b> _____
<b>Date:</b> _____	
<small>I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. I agree to abide by all conditions of this bid and certify that I am authorized to sign this bid for the bidder. <b>This signed page must be included with bid submission.</b></small>	

To submit a “**No Proposal**” response for this project, this form must be completed for your company to remain on our Offerors list for commodities/services referenced. If you do not respond, your name may be removed from the Offerors list.

---

Please check statement(s) applicable to your “**No Proposal**” response

- ☐ Specifications are restrictive; i.e. geared toward one brand or manufacturer only (explain below).
- ☐ Specifications are ambiguous (explain below).
- ☐ We are unable to meet specifications.
- ☐ Insufficient time to respond to the solicitation.
- ☐ Our schedule would not permit us to perform.
- ☐ We are unable to meet bond requirements.
- ☐ We are unable to meet insurance requirements.
- ☐ We do not offer this product or service.
- ☐ Remove us from your vendor list for this commodity/service.
- ☐ Other (specify below).

**Comments:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

<b>Bid Number:</b> 10-B034B	<b>Bids will be received until:</b> November 22, 2010 @ 11:30 am
<b>Bid Title:</b> Akron Mercury Quick Attack Monitor & Assembly	
<b>Mailing Date:</b> October 29, 2010	<b>Direct Inquiries to:</b> Robin D. Barrett, CPPB

### **CERTIFICATE OF FAMILIARITY**

The undersigned, having fully familiarized himself with the information contained within this entire solicitation and applicable amendments, submits the attached proposal, and other applicable information to the City, which I verify to be true and correct to the best of my knowledge. I further certify that this proposal response is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a proposal for the same materials, supplies or equipment, and is in all respects, fair and without collusion or fraud. I agree to proposal by all conditions of this solicitation and certify that I am authorized to sign this proposal. ***By submission of a signed proposal, I certify, under penalty of perjury, that the company identified below complies with section 12-54-1020(B) for the SC Code of Law 1976, as amended, relating to payment of applicable taxes.*** I further certify all prices submitted shall remain effective for a minimum period of ninety (90) days, unless otherwise stated.

\_\_\_\_\_  
Company Name  
As registered with the IRS

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Correspondence Address

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Remittance Address

\_\_\_\_\_  
Toll-Free Number (if available)

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Federal Tax ID (FEIN)/SS Number

\_\_\_\_\_  
SC Sales Tax Number

#### **Minority or Women-Owned Business:**

Are you a certified Minority or Women-Owned business in the State of SC?

☐ Yes      ☐ No

If so, please provide a copy of your certificate with your response.

City of Charleston  
Minority/Women-Owned Business Enterprise (MWBE)  
Compliance Provisions

***This document shall be included with the submittal of the bid or offer. If the bidder or offeror fails to submit the form with the bid or offer as required, the procurement officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.***

**APPLICATION:**

Charleston City Council has adopted a policy setting 20% as the guidelines for combined women-owned and minority-owned business enterprise participation for this project.

**Definitions:**

MBE is defined as a small business owned and controlled by minorities.

WBE is defined as a small business owned and controlled by women.

This means that fifty-one percent (51%) of the business must be owned by minorities or women and that they must control the management and daily operations of the business.

The guidelines for participation in City of Charleston's contracts for services, including construction, are hereby made a part of any contract resulting from this solicitation. These requirements shall apply to all contracts and resulting subcontracts issued by contractors. A list of certified minority-owned and women-owned business enterprises can be found on the City of Charleston's web site [www.charleston-sc.gov](http://www.charleston-sc.gov); or by contacting Theron Snype, MBE Manager, 145 King Street, Ste. 104, Charleston, SC 29401, (843) 973-7247, [snypet@charleston-sc.gov](mailto:snypet@charleston-sc.gov).

**COMPLIANCE REQUIREMENTS:**

1. The Offeror shall provide, **with the submittal**, the following Affidavits properly executed which signify that the Offeror understands and agrees to the incorporated contract provisions:

- ☐ ***Affidavit A - Listing of the Good Faith Effort & Identification of Minority and Women-owned Business Participation*** as certification that efforts were made to use MWBE businesses on this project,  
**AND**
- ☐ ***Affidavit B – Work to be Performed by Minority and/or Women-owned Firms***  
**OR**
- ☐ ***Affidavit C – Intent to Perform Contract with Own Workforce***, in making this certification the Offeror states that the Offeror does not customarily subcontract elements of this type project and will perform all elements of the work with his/her own current work forces.

2. All affidavits supplied by the Offeror shall become a part of the agreement between the Contractor and the City of Charleston for performance of this contract. Failure to comply with any of these statements, certifications, or intentions stated in the Affidavits, or with the MBE/WBE provisions shall constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of the City of Charleston whether to terminate the contract for breach. In addition any breach may result in the bidder being prohibited from participation in future construction bids as determined by the City of Charleston.

The Contractor shall provide an itemized statement of payments to each MBE and WBE subcontractor before final payment is processed.

Name of Company: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Attest: \_\_\_\_\_

## AFFIDAVIT A

Page 1 of 2

### City of Charleston, South Carolina Listing of the Good Faith Effort

Affidavit of \_\_\_\_\_  
(Name of Offeror)

**I have made a good faith effort to comply under the following checked areas:**  
(A minimum of 6 areas must be checked in order to have achieved a "good faith effort")

- 1. Contacted MBE businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on Federal, State or local government maintained lists, at least 10 business days before the submittal date and notified them of the nature and scope of the work to be performed. **Complete Affidavit A, Page 2.**
- 2. Followed up with contacted MBE subsequent to the initial contact and at least 72 hours prior to submittal deadline/bid opening either by phone, facsimile or in person.
- 3. Made the construction plans, specifications, and requirements available for review by prospective MBE businesses, or providing these documents to them at least 10 business days before the submittal deadline/bid opening.
- 4. Itemized elements of the work or combined elements of the work into economically feasible units to facilitate minority participation.
- 5. Attended pre-solicitation meetings scheduled by the City.
- 6. Provided MBE with assistance in getting required bonding or insurance requirements or provided alternatives to bonding or insurance for subcontractors.
- 7. Negotiated in good faith with interested MBEs and did not reject them as unqualified without sound reasons based on their capabilities. **(Any rejection of a minority or woman business based on lack of qualifications shall include reasons for rejection documented in writing.)**
- 8. Provided MBEs with assistance in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted MBEs in obtaining the same unit pricing with the Offeror's suppliers in order to help such businesses in establishing credit.
- 9. Provided training or mentoring to at least two (2) MBEs within 120 days prior to submittal deadline/bid opening. The training or mentoring program should be in conjunction with local trade groups, technical schools or community organizations that provide recruitment, education or skill levels.
- 10. Negotiated joint venture, partnership or other similar arrangements with MBEs in order to increase opportunities for minority business participation.
- 11. Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

The undersigned hereby agrees to enter into a formal agreement with the firms listed in Affidavit B Work to be performed by Minority Firms conditional upon execution of a contract with the Owner. Failure to abide by this provision will constitute a breach of the contract.

The undersigned hereby certifies that he/she has read the terms of the minority business commitment and is authorized to bind the Offeror to the commitment herein set forth.

Date: \_\_\_\_\_ Name of Authorized Officer (Print/Type): \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

# AFFIDAVIT A

Page 2 of 2

## City of Charleston, South Carolina Minority Business Participation Efforts

(Use as many sheets as necessary)

I, \_\_\_\_\_, hereby certify that on this project we contacted the following minority business enterprises as subcontractors, vendors, suppliers, or providers of professional services.

<b>1. Minority Firm Name and Contact</b>	<b>Minority Firm Address</b>
Minority Firm Telephone Number _____ Minority Firm Fax Number _____ DBE Certification Number _____	Minority Group Type <input type="checkbox"/> (African American ) <input type="checkbox"/> (Women ) <input type="checkbox"/> (Asian American ) <input type="checkbox"/> (Hispanic) <input type="checkbox"/> (American Indian) <input type="checkbox"/> (Other) <input type="checkbox"/> Follow up Verification
<b>2. Minority Firm Name and Contact</b>	<b>Minority Firm Address</b>
Minority Firm Telephone Number _____ Minority Firm Fax Number _____ DBE Certification Number _____	Minority Group Type <input type="checkbox"/> (African American ) <input type="checkbox"/> (Women ) <input type="checkbox"/> (Asian American ) <input type="checkbox"/> (Hispanic) <input type="checkbox"/> (American Indian) <input type="checkbox"/> (Other) <input type="checkbox"/> Follow up Verification
<b>3. Minority Firm Name and Contact</b>	<b>Minority Firm Address</b>
Minority Firm Telephone Number _____ Minority Firm Fax Number _____ DBE Certification Number _____	Minority Group Type <input type="checkbox"/> (African American ) <input type="checkbox"/> (Women ) <input type="checkbox"/> (Asian American ) <input type="checkbox"/> (Hispanic) <input type="checkbox"/> (American Indian) <input type="checkbox"/> (Other) <input type="checkbox"/> Follow up Verification
<b>4. Minority Firm Name and Contact</b>	<b>Minority Firm Address</b>
Minority Firm Telephone Number _____ Minority Firm Fax Number _____ DBE Certification Number _____	Minority Group Type <input type="checkbox"/> (African American ) <input type="checkbox"/> (Women ) <input type="checkbox"/> (Asian American ) <input type="checkbox"/> (Hispanic) <input type="checkbox"/> (American Indian) <input type="checkbox"/> (Other) <input type="checkbox"/> Follow up Verification

We certify, under penalties of perjury, that we have examined the information in this affidavit, and to the best of our knowledge and belief, this information is true, correct and complete.

Date: \_\_\_\_\_ Name of Authorized Officer (Print/Type): \_\_\_\_\_

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Signature: \_\_\_\_\_

Notary Public for the State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_ Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

**Notary Seal:**

Phone Number: \_\_\_\_\_

Address: \_\_\_\_\_

## AFFIDAVIT B

### City of Charleston, South Carolina Work to be Performed by Minority Businesses

Affidavit of \_\_\_\_\_ I hereby certify that on the  
(Name of Offeror)

\_\_\_\_\_, Total Project Amount \$ \_\_\_\_\_  
(Project Name)

I will make a good faith effort to expend a minimum of \_\_\_\_\_% of the total dollar amount of the contract with minority business enterprises. Minority businesses will be employed as subcontractors, vendors, suppliers, or providers of professional services. Such work will be subcontracted to the following firms listed below:

(Attach additional sheets if needed)

Name and Phone Number	*Minority Code	Work Description	Dollar Value
			\$
			\$
			\$
			\$
			\$
			\$
			\$

Total MBE Participation: \_\_\_\_\_ % \$ \_\_\_\_\_

\* Minority categories: African American (**B**); Hispanic (**H**); Asian American (**A**), American Indian (**I**); Woman Owned (**W**); Other (**D**)

The undersigned will enter into a formal agreement with minority firms for work listed in this schedule conditional upon execution of a contract with the Owner.

The undersigned hereby certifies that he/she has read the terms of this commitment and is authorized to bind the Offeror to the commitment set forth herein. We certify, under penalties of perjury, that we have examined the information in this affidavit, and to the best of our knowledge and belief, this information is true, correct and complete.

Date: \_\_\_\_\_ Name of Authorized Officer (Print/Type): \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. Notary Public for the State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**Notary Seal:**

Print Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Address: \_\_\_\_\_

## AFFIDAVIT C

### City of Charleston, South Carolina Intent to Perform Contract with Own Workforce.

Affidavit of \_\_\_\_\_  
(Name of Offeror)

I hereby certify that it is our intent to perform 100% of the work required for the \_\_\_\_\_  
\_\_\_\_\_ contract.  
(Name of Project)

In making this certification, the Offeror states that the Offeror does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all the elements of the work on this project with his/her own current work forces, and

The Offeror agrees to provide any additional information or documentation requested by the Owner in support of the above statement.

The undersigned hereby certifies that he/she has read this certification and is authorized to bind the Offeror to the commitments contained herein. We certify, under penalties of perjury, that we have examined the information in this affidavit, and to the best of our knowledge and belief, this information is true, correct and complete.

Date: \_\_\_\_\_ Name of Authorized Officer (Print/Type): \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary Public for the State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Print Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

**Notary Seal:**

**Bid #: 10-B034B Akron Mercury Quick Attack Monitor**

Quantity	Description	Unit Price	Total Price
20 ea	#34430003 Akron Mercury Quick Attack Monitor 2.5NHx2.5NH 500G - Blk		
20 ea	#44450001 Mercury Fog Nozzle 2.5NH Manual 500G W/SPTH PY#		
20 ea	#34430001 Mercury Quick Attack Bracket Assembly		
1 ea	Shipping/Freight Charges		
1 ea	7.5% SC Tax		
	<b>*Preferred Manufacturer and Model given; however, equivalent may be submitted and will be reviewed.</b>		

## **Bidder's Checklist**

1. Did you provide required information and sign the front page of the solicitation?  
\_\_\_\_ Yes \_\_\_\_ No
2. Did you sign the Certificate of Familiarity form?  
\_\_\_\_ Yes \_\_\_\_ No
3. Did you sign the City of Charleston M/WBE Compliance Provisions forms?  
\_\_\_\_ Yes \_\_\_\_ No
4. Did you sign the applicable Affidavit?  
\_\_\_\_ Yes \_\_\_\_ No
5. Did you mark your "Original" proposal and provide the required # of copies?  
\_\_\_\_ Yes \_\_\_\_ No
6. Did you complete and include all pricing sheets?  
\_\_\_\_ Yes \_\_\_\_ No
7. Did you include the required references?  
\_\_\_\_ Yes \_\_\_\_ No
8. Did you provide a copy of insurance and all other documentation requested?  
\_\_\_\_ Yes \_\_\_\_ No
9. Did you include and sign any addenda?  
\_\_\_\_ Yes \_\_\_\_ No
10. Did you double check to make sure you have included everything that is requested?  
\_\_\_\_ Yes \_\_\_\_ No

If you have any concerns, please do not wait until after opening to raise them. **At that point, it is too late. If this solicitation includes a pre-bid conference or a question & answer period, raise your questions during this time.** Please read the bid carefully.

This checklist is included only as a reminder to help Bidders avoid common mistakes. Responsiveness will be evaluated against the solicitation, **not** against this checklist. You do not need to return this checklist with your responsive